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IN THE

Supreme Court of the United States

October Term 1949

No. 159 Misc.

JOHN ROBERT ATHERTON and
HERMAN EDWARD BEHRE,
Petitioners,

vs.

UNITED STATES OF AMERICA

No. 160 Misc.

GEORGE CALVIN EDWARDS, et al.,
Petitioners,

vs.

UNITED STATES OF AMERICA

MEMORANDUM OF CONGRESS OF INDUSTRIAL ORGANIZATIONS *AMICUS CURIAE*, ON PETITION FOR WRITS OF CERTIORARI

ARTHUR J. GOLDBERG
General Counsel

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MEMORANDUM OF CONGRESS OF INDUSTRIAL ORGANIZATIONS *AMICUS CURIAE*, ON PETITION FOR WRITS OF CERTIORARI

The Congress of Industrial Organizations representing millions of workers throughout the United States sees issues of fundamental importance in the within cases. The cases represent a system of forced labor without pay, which appears detrimental to the well being of our land and contrary to the fundamental guarantees against involuntary servitude.

That such an inroad into the power of a worker to earn a livelihood should have become a part of the law is cause for great concern.

At its annual convention in Atlantic City in 1946, problems posed by the Civilian Public Service Camp System was called to its attention.

The resolution attached as Exhibit "A" was passed.

Accordingly, it is urged that the issues raised by the petition are substantial and fundamental. Though this court has denied review of them before (e.g., *Roodenko* v. *United States*, (C.C.A. 10), 147 Fed. (2d) 752, cert. den. 324 U. S. 860, and others) the principles thus established should not be permitted to remain. At least a hearing should be had of the merits.

If Certiorari is granted, leave will be asked to file a brief on the merits.

Respectfully submitted,

ARTHUR J. GOLDBERG
General Counsel

RESOLUTION NO. 44—AMNESTY FOR CONSCIENTIOUS OBJECTORS (Page 275 Proceedings 8th Constitutional Convention of the Congress of Industrial Organizations, Atlantic City, November 18-22, 1946.

WHEREAS, more than a year after the end of hostilities 1,000 conscientious objectors to war and conscription are still confined to Federal prisons, many with sentences of five years, while 5,000 others who have completed their sentences continue to be punished by the loss of civil rights; and

WHEREAS, hundreds of religious objectors, accepting assignment to Civilian Public Service Camps were later sent to prison for striking against the camps' policy of forced labor without pay under military control; and

WHEREAS, the reason given for their imprisonment, that of wartime necessity, no longer exists, and it is fitting for a democracy to remove wartime restrictions upon its citizens at the earliest possible moment; and

WHEREAS, Amnesties have been granted by nine Presidents of the United States and since V-J Day have been given in many other countries; therefore, be it

RESOLVED, that the Congress of Industrial Organizations, reaffirming a high tradition of the American labor movement, urges the President of the United States to proclaim an amnesty for all such conscientious objectors.

Exhibit "A"

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ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Memorandum of George A. Warmer, Superintendent of Los Angeles District, The Methodist Church; E. C. Farnham, Executive Secretary of Church Federation of Los Angeles, and Southern California Council of Protestant Churches; Nelson C. Dreier, Superintendent Congregational Conference of Southern California and the Southwest, Amici Curiae.

The undersigned representatives of their respective church organizations respectfully urge upon this court that the Petition for Writs of Certiorari be granted.

The Interest of Churches in the Issue.

There is, of course, no unanimity of opinion among churches as to the position that should be taken with reference to conscientious objection and war. However, historically, the Church has always recognized the rights of conscience as fundamental to the development of democracy. Even the "non-peace" churches hold conscientious objectors in equal regard with those who bear arms. This recognition, it is felt, should be accorded in practice and not merely in theory.

It is because of this interest and because to the undersigned the above cases thus far represent a denial of the full recognition which should be afforded genuine religious conscientious belief, that this memorandum is filed. From the standpoint of religious freedom, the petition discloses a disregard of Congress' prohibition against military control that is shocking.

Reasons for Granting the Writs.

We appreciate that issues similar to or perhaps identical with those present in the instant cases have been presented to this court before and that certiorari has been denied. See, for example, *United States v. Brooks* (C. C. A. 2), 147 F. 2d 134, cert. den. 320 U. S. 813; *Roodenko v. United States* (C. C. A. 10), 147 F. 2d 752, cert. den. 324 U. S. 860; *U. S. ex rel. Zucker v. Osborne* (C. C. A. 2). 147 F. 2d 135, cert. den. 325 U. S. 881; *Kramer v. United States* (C. C. A. 6), 147 F. 2d 756, cert. den. 324 U. S. 878; *United States v. Gormly* (C. C. A. 7), 136 F. 2d

227, cert. den. 320 U. S. 753, reh. den. 320 U. S. 813; *Dingman v. United States* (C. C. A. 9), 156 F. 2d 148, cert. den. 329 U. S. 730, reh. den. 329 U. S. 831.

However, as this court many times has said, the denial of certiorari imports no expression of opinion on the merits (*Sunal v. Large,* 332 U. S. 174, 181; *House v. Mayo,* 324 U. S. 42, 48). Accordingly, we urge consideration again of the fundamental and far reaching issues raised by the petition. Now that the pressure of the actual war is over and the effect of the Civilian Public Service Camps may be reviewed in retrospect, it would be well that review be granted in order, at least, to consider the righting of what, to us, has been a grievous wrong which should not be permitted to become engrained in the law.

Respectfully submitted,

ROBERT R. RISSMAN,

Counsel for George A. Warmer, Superintendent of Los Angeles District, The Methodist Church; E. C. Farnham, Executive Secretary of Church Federation of Los Angeles, and Southern California Council of Protestant Churches; Nelson C. Dreier, Superintendent Congregational Conference of Southern California and the Southwest, Amici Curiae.